IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.MC.No. 713 of 2006()

ST.334/2005 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

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PETITIONER:

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1. BELL HOUSE ASSOCIATES PRIVATE LIMITED,
   9 H.B., PANAMPALLY NAGAR, COCHIN-16,
   REP. BY DIRECTOR JOSE ANTONY KOKKAD.

2. JOSE ANTONY KOKKAD,
   AGED 62 YEARS, S/O.LATE ANTONY ITOOP,
   72 H, PANAMPALLY NAGAR, ERNAKULAM,
   COCHIN-36.

BY ADV. SRI.P.M.JOSHI

RESPONDENTS:

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1. THE ASSISTANT REGISTRAR OF COMPANIES,
   KERALA COMPANY LAW BHAVAN, B.M.C. ROAD,
   THRIKKAKKARA.P.O, KAKKANAD, COCHIN-21.

2. STATE OF KERALA,
   REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/02/2007, ALONG WITH CRMC NO. 834 OF 2006 CRMC NO. 790 OF 2006 CRMC NO. 806 OF 2006, CRMC NO. 817 OF 2006 CRMC NO. 833 OF 2006 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos. 713, 790, 806, 817, 833 & 834 of 2006

Dated this the 6th day of February, 2007

ORDER

The petitioners are accused 1 and 2 in six prosecutions, all initiated under the provisions of the Companies Act. The petitioners are a Company and its Director. Six complaints have been filed against the petitioners. They relate to alleged culpable conduct for the calendar years of 2002, 2003 and 2004. Three prosecutions relate to contumacious failure to file annual returns within the stipulated time. Three others relate to the contumacious failure to file balance sheets within the stipulated period. The prosecutions are under Sections 159 and 220(3) of the Companies Act, both read with Section 162 of the said Act. The complaints were filed on 28.7.05. Cognizance has been taken. The petitioners have rushed to this Court with a prayer that the proceedings against them in these six cases may be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason ? The learned counsel for the petitioners relies on two specific grounds. He first of all contends that there was a scheme called “Simplified Exit Scheme-2005”, which was in force till 31.08.2005 as subsequently extended. The prosecution, ie. Government of India, Ministry of Company Affairs had offered the

facility of the Simplified Exit Scheme-2005 to all defunct companies. Such companies could avail of the benefits of the Simplified Exit Scheme and relieve themselves of all consequences of non compliance by applying for striking off the name of the defunct company under the scheme. Annexure-1 produced in all cases is the intimation to the petitioners by the Assistant Registrar of Companies inviting them to avail the benefits of the scheme. The petitioners allegedly wanted to avail of the scheme and accordingly they submitted the requisite application. Annexures-2 & 3 are relied on to show that such applications had been received by the authorities and they did contemplate acceptance of the petitioners' application to avail of the benefits of the Simplified Exit Scheme.

3. It is admitted at all hands that the petitioners ultimately did not succeed in availing the benefit of the scheme. The company continues even now without being struck off as a defunct company.

4. The first ground of challenge is that under the scheme, which was originally in force till 31.7.05 and later extended till 31.08.05, the company could have avoided all further prosecution till 31.08.2005. The complaint was filed on 28.07.05 and this is contrary to the assurance given in Annexure-1 that if persons avail the benefits of the scheme, they can avoid further prosecution proceedings. That scheme was open till 31.08.05 and therefore the complaint filed on 28.07.05 is legally unsustainable.

5. I do not find any merit in this first contention. A reading of Annexure-1 shows that really what is intended is that a defunct company who successfully avails of the Simplified Exit Scheme-2005 can avoid further prosecution proceedings. The petitioners did not succeed in availing the benefits of the said scheme. Such a person who did not succeed in availing the scheme cannot according to me insist that the prosecution initiated against him on 28.07.05 is bad for the reason that the same has been initiated prior to 31.08.2005. No failure of justice is shown to result. Of course, if the petitioners had successfully availed the scheme, the prosecution initiated on 28.07.05 could have been quashed. But that is not the case. The petitioners admittedly did not succeed in availing the benefits of the Simplified Exit Scheme-2005. The promise in Annexure-1 is evidently only to those who successfully avail the Simplified Exit Scheme-2005. The mere fact that the scheme remained in force till 31.08.2005 cannot persuade this Court to quash the proceedings initiated by complaint dated 28.07.05. The challenge on the first ground must in these circumstances fail.

6. The next contention is that the petitioners had paid all amounts which are payable under Section 611(2) of the Companies Act. According to the petitioners, actually for these six instances for which he is prosecuted, the maximum amount that would be payable under Section 611(2) of the Act read along with relevant entry in

Schedule X is only Rs.33,000/- [(5,000 + 500) X 6]. The petitioners had in fact deposited an amount of Rs.32,000/- initially and a subsequent amount of Rs.18,000/- as directed by the authorities. Thus in all, an amount of Rs.50,000/- has been paid. This according to the petitioner is more than the maximum that is leviable under Section 611(2) of the Companies Act. An amount of Rs.17,000/- in excess of the maximum having been collected from the petitioners, the petitioners are entitled to get the present proceedings quashed, urges the learned counsel for the petitioners.

7. I extract Section 611(2) of the Companies Act below:

> Section 611(2): Any document required or authorised by this Act to be filed or registered, or any fact required or authorised by this Act to be registered, with the Registrar on payment of the fee specified therefor in Schedule X, may, **without prejudice to any other liability**, be filed or registered after the time, if any, specified in this Act for its filing or registration on payment of such additional fee not exceeding ten times the amount of the fee so specified as the Registrar may determine."
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> (emphasis supplied)

The language of Section 611(2) thus makes it very clear that the payment of the amounts under Section 611(2) is without prejudice to any other liability which the defaulter has. The defaulter exposes himself the liability to be prosecuted for breach of the stipulation of Section 159 and 220(3) read with 162 of the Act and the payments made under Section 611(2) cannot absolve the petitioners of the

liability to be prosecuted in these six prosecutions. Payment of the amount under Section 611(2) of the Act by itself cannot in these circumstances persuade this Court to quash the proceedings. The decision in **Pylo Luka Muricken v. Registrar of Companies, Kerala State** [1977 Volume 47 Company Cases 291] is relied on by the complainant as authority for the proposition that payment under Section 611(2) of the Companies Act is in addition to the liability to be prosecuted. I accept the said contention.

8. The learned counsel for the petitioners submits that the remittance of extra amount of Rs.17,000/- by him as directed by the authorities must persuade this Court to quash the proceedings. I find no reason or logic in this request. There is no contention that the said amount of Rs.17,000/- has been paid as price for withdrawal of prosecution or for composition. Even assuming that an error has been committed in computing the maximum amount leviable under Section 611(2) of the Act, I am unable to accept the contention that the prosecution is liable to be quashed on that ground. The fact that excess amount that has allegedly been paid, if true, may be pressed into service to claim reduction of liability for penalty/punishment in the prosecutions.

9. I do not in these circumstances find either of the two contentions acceptable. The prosecutions cannot be quashed for the said reasons.

10. These Crl.M.Cs are, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-